W 47 (1 only) 9

A Brief SURVEY Of the English Laws, AND, Their Unsoundness and Corruptio DISCOVERED.

Wherein is set down,

I. The measure of all just Laws,

In
1. Their beginning, and the free choice of the people.
2. Their Rule and Square, *viz.* Justice, Righteousness, Truth.
3. Their Use and End, *viz.* the Liberty Safety of the People.

II. The Law of *England* found too light three ways;

In
1. Their Original, *viz.* Force, Power, and Conquest.
2. Their Rule.
3. Their End.

III. The necessity of Reformation of the Laws *England*; together with the excellency and difficulty of this wor

IV. The beginning and corrupt interests of the La
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Unto which is annexed, an Essay to the happie Go
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Printed at *London*, and are to be sold in Westminster-hall. 1653.

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Chap. I.

Containing the juſt meaſure of all good Lawes, in their Originall, Rule, and end: Together with a reflexion (by way of Antitheſis) upon unjuſt Lawes.

THoſe *Laws* which do carry any thing of *Freedom* in their *bowells*, do owe their *Originall* to the *Peoples choice*; and have been wreſted from the *Rulers* and *Princes* of the world, by *importunity of intreaty*, or by *force of Armes*: For the *great men* of the world being inveſted with the *Power* thereof, cannot be imagined to eclipſe *themſelves* or their own *Pomp*, unleſſe by the violent *interpoſition* of the *peoples ſpirits*, who are moſt ſenſible of their own *burdens*, and moſt forward in ſeeking *reliefe*. So that *Exorbitancie* and *Injuſtice* on the part of *Rulers* was the *riſe* of *Laws* in behalf of the *People*, which conſideration will afford us this *generall Maxime*, That the *pure and genuine intent of Lawes was to bridle Princes, not the People*, and to keep *Rulers* within the *bounds*, of *juſt* and *righteous Government*: from whence, as from a *Fountain*, the *rivulet* of *ſubjection* and *obedience* on the *peoples* part, did reciprocally flow forth, partly to gratifie, and partly to incourage *good* and *vertuous Governors*: So that *Lawes* have but a ſecondary reflexion on the *People*, glancing onely at them, but looking with a full eye upon *Princes*. Agreeable to this is that of *Ci-*

cero Lib. 2. de Offic. whose words are to this effect: *Cùm premeretur olim multitudo ab iis qui majores opes habebant, statim confugiebat ad unum aliquem virtute praestantem, &c. Jus enim semper quaesitum est aequabile, neq; enim aliter esse Jus, id si ab uno bono & justo viro consequebantur, eo erant contenti, cùm id minùs contingeret Leges sunt inventæ, &c.* (i.) *When the people did obtain redresse of their wrongs from some just and good man, they were satisfied therewith; but when they failed thereof, they found out Lawes,* &c.

From which Assertion we may deduce a twofold corallarie.

1. That at the *Foundation* of *Governments Justice* was in *men*, before it came to be in *Laws*; for the onely *Rule* of *Government* to *good Princes*, was their own *wills*; and *people* were content to pay *them* their *subjection* upon the *security* of their bare words: So here in *England*, in the daies of *King Alfred*, the *Administration of Justice* was immediately in the *Crown*, and required the *personall attendance* of the *King*.

2. But this *course* did soon bankerupt the world, and drive men to a necessity of taking bond from their *Princes*, and setting limits to their *Power*; hence it came to passe, that *Justice* was transmitted from *men* to *Laws*, that both *Prince* and *People* might read their *duties*, *offences*, and *punishments* before them.

And yet such hath been the *interest* of *Princes* in the world, that the *sting* of the *Law* hath been plucked out as to *them*; and the weight of it fallen upon the *People*, which hath been more grievous, because out of its *place*, the *Element* of the *Law* being beneficiall, not cumbersom within its own *sphere*. Hence it is, that *Laws* (like swords) come to be used against those which made them; and being put upon the rack of *self* and *worldly interest*, are forced to *speak* what they never *meant*, and to accuse their best friends, the *People*. Thus the *Law* becomes any thing or nothing, at the *courtesie* of *great men*, and is bended by them like a *twig*: Yea, how easie is it for such men to *break* those *Customes* which will not *bow*, and to erect *traditions* of a more complying temper

to

to the wills of thoſe, whoſe end they ſerve. So that *Law* comes to be loſt in *Will* and *Luſt*; yea *Luſt* by the adoption of *greatneſſe* is enacted *Law*. Hence it comes to paſſe, that *Laws* upon *Laws* do bridle the *People*; and run counter to their *end*; yea the farther we go, the more out of the way. This is the *originall* of unjuſt *Laws*.

No marvell that *Freedom* hath no voice here, for an *Vſurper* reigns; and *Freedom* is proſcribed like an *Exile*, living only in the underſtandings of ſome few *men*, and not daring to appear upon the *Theater* of the *world*.

But yet the *minds* of *men* are the great *wheeles* of things; thence come changes and alterations in the world; teeming *Freedom* exerts and puts forth it ſelf; the unjuſt world would ſuppreſſe its appearance, many fall in this conflict, but *Freedom* will at laſt prevaile, and give *Law* to all things.

So that here is the *proper Fountain* of good and *righteous Laws*, a ſpirit of underſtanding big with *Freedom*, and having a ſingle reſpect to *Peoples Rights*, *Judgement* goes before to create a capacity, and *Freedom* follows after to fill it up. And thus *Law* comes to be the *bank* of *Freedom*, which is not ſaid to *ſtraighten*, but to *conduct* the *ſtreame*. A *people* thus watered, are in a thriving poſture; and the rather becauſe the foundation is well laid, and the *Law* reduced to its *originall ſtate*, which is the *protection* of the *Poor* againſt the *Mighty*.

If it were poſſible for a *People* to *chooſe* ſuch *Laws* as were prejudiciall to themſelves, this were to forſake their own intereſt: Here (you'l ſay) is free *choice*; But bring ſuch *Laws* to the *Rule*, and there is a *failer* there; the *Rule* of *righteous Laws are clear and righteous Principles* (according to the ſeverall appearances of *truth* within us) for *Reaſon* is the *meaſure* of all juſt *Laws* though the ſize differ according to the various apprehenſions of *People*, or *tempers* of *Common-Wealths*, ſo that *choice* abſtracted or conſidered in it ſelf is no undeniable *badge* of a *juſt Law*, but as it is mixed with other *ingredients*; as on the contrarie *Force and Power* are not therefore condemned, becauſe they have hands to ſtrike, but becauſe they have no eyes to ſee (i.) they are not uſually ballanced.

lanced with *understanding* and *right reason* in *making* or *executing* of *Laws*, the *sword* having commonly more of the *Beast* in it, then the *Man*.

Otherwise, to be imposed upon by the *art* of *truth*, is to be caught by a warrantable *guile*, and to be kept by *force* from injuring ones self or others, hath more of *courtesie* then *severenesse* therein; And in this case reason will cast the *scales* and ascribe more to a *seeing force* then a *blind choice*; the righteousnesse or unrighteousnesse of things depends not upon the circumstances of our embracing or rejecting them, but upon the *true nature* of the things themselves: Let *righteousnesse* and *truth* be given out to the *Nation*, we shall not much quarrell at the manner of conveighance, whether this way, or that way, by the *Beast*, or by the *Man*, by the *Vine*, or by the *Bramble*.

There is a twofold *Rule* of *corrupt Laws*.

1. *Principles* of *self* and *wordly greatnesse* in the *Rulers* of the world, who standing upon the Mountain of *Force and Power*, see nothing but their own Land round about them, and make it their design to subdue *Lawes* as well as *Persons*, and enforce both to do homage to their *wills*.

2. *Obsequiousnesse*, *Flatterie*, or *Compliancie* of spirit to the foresaid *principles*, is the womb of all degenerous *Lawes* in inferiour *Ministers*: 'Tis hard indeed, not to swim with the *stream*, and some men had rather give up their *Right* then contend, especially upon apparent disadvantage; 'Tis true these things are *temptations* to men, and 'tis one thing to be *deflowred*, but to give up ones self to *uncleanesse* is another: 'Tis better to be ravished of our *Freedoms* (corrupt times have a force upon us) then to give them up as a *Free-will* offering to the *lusts* of *great men*, especially if we our selves have a share with them in the same design.

Easinesse of spirit is a wanton frame, and so far from resisting, that it courts an assault; yea such persons are *prodigall* of other mens stock, and give that away for the bare asking, which will cost much labour to regain. *Obsequious and servile spirits are the worst Guardians of the Peoples Rights.*

Upon the *advantage* of such spirits, the *interest* of *Rulers* hath

hath been heightned in the world, and ſtrictly guarded by ſevereſt *Laws*, And truly, when the door of an *Intereſt* flies open at a knock, no marvell that *Princes* enter in.

And being once admitted into the boſom of the *Law*, their firſt work is to ſecure *themſelves*; And here what *ſervility* and *flatterie* are not able to effect, that *Force* and *Power* ſhall: And in order hereto a *guard of Lawes* is impreſſed to ſerve and defend *Prerogative Power*, and to ſecure it againſt the aſſaults of *Freedom*, ſo that in this caſe, *Freedom* is not able to ſtir without a load of prejudice in the minds of men, and (as a ground thereof) a viſible guilt, as to the *Letter of the Law*.

But how can ſuch *Lawes* be good which ſwerve from their *end*: The *end* of *juſt Laws* is the *ſafety* and *freedom* of a *People*.

As for *ſafety*, juſt *Laws* are bucklers of defence: when the mouth of violence is muzzled by a *law*, the innocent feed and ſleep ſecurely: when the wolviſh nature is deſtroyed, there ſhall then be no need of *law*, as long as that is in being, the *curb* of the *law* keeps it in reſtraint, that the *great* may not oppreſſe or injure the *ſmall*.

As for *ſafety*, *laws* are the *Manacles of Princes*, and the *guards* of private men: So far as *lawes* advance the *Peoples Freedoms*, ſo far are they *juſt*, for as the *Power* of the *Prince* is the *meaſure* of unrighteous *lawes*, ſo *juſt laws* are weigh'd in the balance of *Freedom*: where the firſt of theſe take place, the *People* are wholly *ſlaves*; where the ſecond, they are wholly *free*: but moſt *Common-wealths* are in a middle poſture, as having their *lawes* grounded partly upon the intereſt of the *Prince*, and partly upon the *account* of the *People*, yet ſo as that *Prerogative* hath the greateſt influence, and is the chiefeſt ingredient in the mixture of *Law*, as in the *Laws* of *England* will by and by appear.

CHAP.

Chap. II.

The Failers of our English Lawes, in their Originall, Rule, and End.

THe influence of *force* and *power* in the *ſanction* of our *Engliſh lawes*, appears by this, *That ſeverall alterations have been made of our lawes, either in whole, or in part, upon every conqueſt.* And if at any time the *Conqueror* hath continued any of the *Ancient lawes*, it hath been only to pleaſe and ingratiate himſelf into the people, for ſo generous *Theeves* give back ſome part of their *money* to *Travellers*; to abate their zeal in purſuit.

Upon this ground I conceive it is, why *Forteſcue* (and ſome others) do affirm; That notwithſtanding the ſeverall conqueſts of this *Realm*, yet the ſame *lawes* have ſtill continued, his words are theſe: *Regnum Angliæ primò per Britones inhabitatum eſt, deinde per Romanos regulatum, iterumq; per Britones, ac deinde per Saxones poſſeſſum, qui nomen ejus ex Britanniâ in Angliam mutaverunt; extunc per Danos idem regnum parumper dominatum eſt, & iterum per Saxones, ſed finaliter per Normannos, quorum propago regnum illud obtinet in præſenti, & in omnibus Nationum harum & Regum earum temporibus, regnum illud iiſdem quibus jam regitur conſuetudinibus, continuè regulatum eſt.* That is, *The Kingdom of England was firſt inhabited by the Britons, afterwards 'twas governed by the Romans; and again by the Britons, and after that by the Saxons; who changed it's name from Brittain to England: In proceſſe of time the Danes ruled here, and again the Saxons, and laſt of all the Normans, whoſe poſterity governeth the Kingdome at this day; And in all the times of theſe ſeverall Nations, and of their Kings, this Realme was ſtill ruled by the ſame cuſtomes, that it is now governed withall:* Thus far *Forteſcue* in the *Raign* of *Henry the Sixth.* Which opinion of his can be no otherwiſe explained (beſides what we have already ſaid) then that ſucceeding *Conquerors* did ſtill retain thoſe parts of former

Forteſc. cap. 17.

lawes,

Lawes, which made for their own *intereſt*; otherwiſe 'tis altogether inconſiſtent with *reaſon*, that the *Saxons* who baniſhed the *Inhabitants*, and changed the *Name*, ſhould yet retain the *Lawes* of this *Iſland*. *Conquerors* ſeldom ſubmit to the *law* of the *conquered* (where *Conqueſts* are compleat, as the *Saxons* was) but on the contrary, eſpecially when they bare ſuch a mortall feud to their perſons: which argument (if it were alone) were ſufficient to demonſtrate, that the *Britons* and their *Lawes* were baniſhed together; and to diſcover the weakneſſe of the contrarie opinion, unleſſe you take the *Comment* together with the *Text*, and make that explanation of it which we have done.

And yet this is no honor at all to the *Lawes* of *England*, that they are ſuch pure *ſervants* to corrupt *intereſts*, that they can keep their *places* under *contrary maſters*; *juſt* and *equall lawes* will rather indure perpetuall impriſonment, or undergo the ſevereſt death, then take up *Arms* on the tother ſide (yea *Princes* cannot truſt ſuch *lawes*) *An hoary head (in a law) is no Crown, unleſſe it be found in the way of righteouſneſſe*, Prov. 16. 31.

By this it appears that the *notion* of *fundamental law*, is no ſuch *Idoll* as men make it: For, what (I pray you) is *fundamentall law*, but ſuch *cuſtoms* as are of the *eldeſt date*, & longeſt continuance? Now *Freedom* being the proper *rule* of *Cuſtom*, 'tis more fit that unjuſt *cuſtoms* ſhould be reduced, that they may continue no longer, then that they ſhould keep up their *Arms*, becauſe they have continued ſo long. The more *fundamentall a law* is, the more *difficult*, not the leſſe *ſſneccearie*, to be reformed: but to return.

Upon every *Conqueſt*, our very *lawes* have been found *tranſgreſſors*, and without any judiciall proceſſe, have undergone the *penalty* of *Abrogation*; not but that our *Lawes* needed to be *reformed*, but the onely *reaſon* in the *Conqueror* was his own *will*, without reſpect to the *Peoples Rights*; and in this caſe the *riders* are changed, but the *burdens* continued, for *meer force* is a moſt partiall thing, and ought never to paſſe in a *Jury* upon the *Freedoms* of the *People*; and yet thus it hath been in our *Engliſh Nation*, as by examining the *originall* of it may appear; and in bringing down its pedigree to this preſent time, we ſhall eaſily perceive, that the *Britiſh laws* were altered by the *Romans*, the *Roman law* by the *Saxons*, the *Saxon law* by the *Danes*, the *Daniſh law* by *King Edward the Confeſſor*, *King Edwards Lawes* by *William*

The ſeveral alterations of the Lawes of England.

William the Conqueror, which being ſomewhat moderated and altered by ſucceeding *Kings*, is the *preſent Common law* in *force* amongſt us, as will by and by appear.

The *Hiſtory* of this *Nation* is tranſmitted down to us upon reaſonable credit for 1700. yeers laſt paſt; but whence the *Britons* drew their *originall* (who inhabited this *Iſland* before the *Roman Conqueſt*) is as uncertainly related by *Hiſtorians*, as what their *Lawes* and *Conſtitutions* were; and truly after ſo long a *ſeries* of times, 'tis better to be ſilent, then to bear falſe witneſſe.

But certain it is, that the *Britains* were under ſome kind of *Government*, both *Martiall* and *Civill*, when the *Romans* entred this *Iſland*, as having perhaps borrowed ſome Lawes from the *Greeks*, the *refiners* of humane ſpirits, and the ancienteſt *inventers of Lawes:* and this may ſeem more then conjecturall, if the opinion of ſome may take place, that the *Phœnicians or Greeks* firſt ſailed into *Britain*, and mingled *Cuſtomes* and Languages together: For, it cannot be denyed, that the *Etymon* of many *Britiſh* words ſeems to be *Greekiſh*, as (if it were materiall to this purpoſe) might be clearly ſhown.

But 'tis ſufficient for us to know, that whatever the *lawes* of the *Britons* were upon the *Conqueſt* of *Cæſar*, they were reviewed and altered, and the *Roman law* ſubſtituted in it's room, by *Veſpaſian*, *Papinian* and others, who were in perſon here; yea divers of the *Britiſh Nobles* were educated at *Rome*, on purpoſe to inure them to their *lawes*.

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The *Civill law* remaining in *Scotland*, is ſaid to have been planted there by the *Romans*, who conquered a part thereof. And this *Nation* was likewiſe ſubject to the ſame *law*, till the ſubverſion of this State by the *Saxons*, who made ſo barbarous a *Conqueſt* of the *Nation*, and ſo razed out the *Foundation* of former *lawes*, that there are leſſe footſteps of the *Civill law* in this, then in *France*, *Spain*, or any other *province* under the *Roman Power*.

So that whilſt the *Saxons* ruled here, they were governed by their own *lawes*, which differed much from the *Britiſh law*, ſome of theſe *Saxon laws* were afterward digeſted into *form*, and are yet extant in their *originall tongue*, and tranſlated into *Latin*.

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The next *alteration* of our *Engliſh lawes* was by the *Danes*, who repealed and nulled the *Saxon law*, and eſtabliſhed their owne in its ſtead; hence it is, that the *Laws of England* do bear great affinity with the *Cuſtomes* of *Denmarke*, in *Deſcents of Inheritance*, *Trialls of Right*, and ſeverall other wayes: 'tis propable that originally *Inheritances* were divided in this *Kingdom* amongſt all the Sons by *Gavel-kind*, which *Cuſtome* ſeemes to have been inſtituted by *Cæſar* both amongſt *us*, and the *Germans*, (and as yet remaines in *Kent*, not wreſted from them by the *Conqueror*) but the *Danes* being ambitious to conform us to the pattern of their owne *Countrey*, did doubtleſſe alter this *Cuſtome*, and allot the *Inheritance* to the *eldeſt ſon*; for that was the *courſe* in *Denmarke*, as *Walſingham reports in his Upodigma Neuſtriæ*; *Pater cunctos filios adultos à ſe pellebat, præter unum quem hæredem ſui juris relinquebat*; (*i.*) *Fathers did expoſe and put forth all their ſons, beſides one whom they made heir of their eſtates.*

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So likewiſe in *Trialls of Rights by twelve men* our *Cuſtomes* agree with the *Daniſh*, and in many other particulars which were introduced by the *Danes*, *diſuſed* at their expulſion, and revived againe by *William the Conqueror*.

For after the *Maſſacre* of the *Deans* in this *Iſland*, King *Edward the Confeſſor* did againe alter their Laws, and though he extracted many particulars out of the *Daniſh Lawes*, yet he grafted them upon a *new ſtock*, and compiled a *Body of lawes* ſince knowne by his name, under the *protection* of which the people then lived; ſo that here was another alteration of our *Engliſh lawes*.

Daniſh Law al red by K Edward the Con feſſor.

And as the *Daniſh law* was altered by *King Edward*, ſo were *King Edwards lawes* diſuſed by the *Conqueror*, and ſome of the *Daniſh Cuſtomes* againe revived: And to clear this, we muſt conſider, that the *Danes* and *Normans* were both of a ſtock, and ſituated in *Denmarke*, but called *Normans* from their *Northern* Situation, from whence they ſailed into *France*, and ſetled their *Cuſtomes* in that part of it, which they called *Normandy* by their owne *name*, and from thence into *Britain*. And here comes in the *great alteration* of our *Engliſh lawes* by *William the Conqueror*, who ſelecting ſome paſſages out of the *Saxon*, and ſome out of the *Daniſh law*, and in both having greateſt reſpect to

Edw. *th Confeſſo Laws al tered by* William *the Conqueror.*

his owne *Interest*, made by the *Rule* of his *Government*, but his own *will* was an *exception* to this *Rule* as often as he pleased.

For, the *alterations* which the *Conqueror* brought in, were very great, as the *clothing his lawes with the Norman Tongue*, the appointment of *Termes* at *Westminster*, whereas before the *people* had *Justice* in their owne *Countreyes*, there being severall *Courts* in every *County*, and the *Supreme Court* in the *County* was called, *Generale Placitum*, for the determining of those *Controversies* which the *Parish* or the *Hundred Court* could not decide; the ordaining of *Sheriffes* and other *Court-Officers* in every *County* to keep *people* in subjection to the *Crowne*, and upon any attempt for redresse of *injustice*, *life* and *land* was forfeited to the *King*: Thus were the *Possessions* of the *Inhabi-*
Holinshed. *tants* distributed amongst his *Followers*, yet still upon their good behaviour, for they must hold it of the *Crowne*, and in case of disobedience, the *Propriety* did revert: And in order hereto, *certaine Rents* yeerly were to be paid to the *King*. Thus as the *Lords* and *Rulers* held of the *King*, so did *inferiour persons* hold of the *Lords*; Hence come *Landlord*, *Tenant*, *Holds*, *Tenures*, &c. which are slavish ties and badges upon men, grounded originally on *Conquest and Power*.

Yea the *lawes* of the *Conqueror* were so burthensome to the *people*, that succeeding Kings were forced to abate of their *price*, and to give back some *freedome* to the *people*: Hence it came to passe, that *Henry the first* did mitigate the *lawes* of his *Father the Conqueror*, and restored those of *King Edward*; hence likewise came the *Confirmation of Magna Charta*, and *Charta Foreste*, by which latter, the power of the King was abridged in inlarging of Forrests, whereas the *Conqueror* is said to have demolished a vast number of buildings to erect and inlarge *New Forests* by *Salisbury*, which must needs bee a grievance to the people. These *freedomes* were granted to the *people* not out of any love to *them*, but extorted from *Princes* by fury of *War*, or *incessantnesse of addresse*; and in this case *Princes* making a *vertue* of *necessity*, have given away that, which was none of their own, and they could not well keep, in hope to regaine it at other times; so that what of *freedome* we have by the *law*, is the *price* of much *hazard* and *blood*. Grant, that the *People* seem to have had a shadow of *freedome* in *chooſing of lawes*, as consenting

ing to them by their *Representatives*, or *Proxies* both before and since the *Conquest*, (for even the *Saxon Kings* held their *Conventions or Parliaments*,) yet whosoever shall consider how arbitrary such *meetings* were, and how much at the *devotion* of the *Prince* both to *summon* and *dissolve*, and withall how the spirit of *Freedome* was observed and kept under, and likewise how most of the *Members of* such *Assemblies* were *Lords, Dukes, Earls, Pensioners to the Prince, and the Royall Interest*, will easily conclude, that there hath been a failer in our *English Lawes*, as to matter of *Election or free choice*; there having been alwaies a rod held over the *Choosers*, and a *Negative Voice*, with a *Power of dissolution*, having alwaies nipt *Fredome* in the *Bud*.

The *Rule* of our *English Lawes* is as faulty as the *Rise*. The *Rule* of our *laws* may be referred to a twofold *Interest*.

1. The *interest* of the *King* which was the *great bias* and *rule* of the *law*, and other *interests*, but *tributary* to this: hence it is all our *laws* run in the *name* of the *King*, and are caried on in an *Orb* above the *sphere* of the *people*; hence is that saying of *Philip Honor. Cùm à Gulielmo Conquestore, quod perinde est ac Tyrannus, institutæ sint leges Angliæ, admirandum non est quòd solam Principis utilitatem respiciant, subditorum verò bonum desertum esse videatur.* (*i.*) *Since the laws of England were instituted by William the Conqueror, or Tyrant, 'tis no wonder that they respect onely the Prerogative of the King, and neglect the Freedome of the People.*

2. The *interest* of the *People*, which (like a worme) when *trod* upon did *turne* againe, and in smaller *iotas* and diminutive parcells, wound in it selfe into the *Texture* of *law*, yet so as that the *Royall interest* was above it, and did frequently suppresse it at its pleasure. The *Freedom* which we have by the *law*, owns its originall to this *interest* of the *People*, which as it was formerly little knowne to the world, so was it misrepresented by *Princes*, and loaden with reproaches, to make it odious: yea, *liberty* the result thereof was obtained but by parcells, so that we have rather a *taste* then a *draught* of *Freedome*.

If then the *rise* and *rule* of our *law* be so much out of *tune*, no marvell that we have no good Musick in the end, but

bondage

Bondage, instead *of freedom*, and instead of *safety*, *danger*. For the *law* of *England* is so full of *uncertainty*, *nicety*, *ambiguity*, *and delay*, that the poor people are *ensnared*, not remedied thereby: the *formality* of our *English law* is that to an oppressed man, which *School-Divinity* is to a wounded spirit, when the *Conscience* of a *sinner* is peirced with *remorse*, 'tis not the *nicety* of the *Casuist*, which is able to heale it, but the *solid experience* of the grounded *Christian*.

'Tis so with the *law*, when the poor & oppressed want *right*, they meet with *law*; which (as 'tis managed) is their greatest *wrõg*, so that *law* it self becoms a sin, & an experimented grievance in this *Nation*. Who knows not that the *web* of the *law* intangles the *small flies*, and dismisseth the *great*? so that a mite of *equity* is worth a whole bundle of *law*: yea many times the very *law* is the *badge* of our *oppression*, its proper intent being to enslave the *people*; so that the *Inhabitants* of this *Nation* are lost in the *law*, such and so many are the *References*, *Orders*, and *Appeales*, that it were better for us to sit down by the *losse*, then to seek for *relief*; for *law* is a chargeable *Physitian*, and he which hath a great *Family* to maintain, may well take large *fees*.

For the *Officers* or *meniall servants* of the *law* are so numerous, that the *price of right* is too high for a poor man; yea many of them procuring their places by sinister waies, must make themselves *savers* by the vailes of their office; yea 'twere well, if they rested her and did not raise the *Market* of their *Fees*, for they that buy at a great rate, must needs sell deer.

But the *poor* and the *oppressed* pay for all, hence it is, that such men grow rich upon the ruines of others, and whilest *law* and *Lawyer* is advanced, *equity* and *truth* are under hatches, and the people subject to a legall *Tyranny*, which of all bondages is one of the greatest.

Meer *force* is its own *argument*, and hath nothing to plead for it, but it self, but when oppression comes under the *notion* of *law*, 'tis most ensnaring; for sober-minded men will part with some *right* to keep the *rest*, and are willing to bear to the utmost; but perpetuall burdens will break their *backs* (as the strongest jade tyres at the last) especially when there is no hope of relief.

CHAP.

CHAP. III.

Of the neceſsity of the Reformation of the Laws *of* England, *together with the excellency (and yet difficulty) of the worke.*

THe more generall a *good* is, the more *divine and God-like*: Grant that *Prerogative lawes* are good for *Princes*, and advantagious to their *Intereſt*, yet the ſhrubs are more in number then the *Cedars* in the *Forreſt* of the world; and *Lawes of Freedome* in behalfe of the *people* are more uſefull, becauſe directed to a more *generall good*, *Communities* are rather to be reſpected, then the *Privadoe Intereſts of great men*.

Good Patriots ſtudy the *people*, as *Favourites* do the *Prince*, and it is altogether impoſſible, that the people ſhould be *free* without a *Reformation* of the *law*, the ſource and root of *Freedome*. An equall and ſpeedy diſtribution of *Right* ought to be the *Abſtract and Epitome of all lawes*, and if ſo,

Why are there ſo many delayes, turnings and windings in the *laws* of *England*?

Why is our *law* a *Meander* of *Intricacies*, where a man muſt have contrary winds before he can arrive at his deſired *Port*?

Why are ſo many men deſtroyed for want of a *Formality* and *Punctilio* in *law*? And who would not bluſh, to behold ſeemingly grave and learned *ſages* to prefer a *letter*, *ſyllable* or *word* before the *weight* and *merit* of a *cauſe*?

Why do the iſſue of moſt *Law-ſuits* depend upon *Preſidents* rather then the *Rule*, eſpecially the *Rule* of *Reaſon*?

Why are mens lives forfeited by the *law* upon *light* and triviall grounds?

Why do ſome *laws* exceed the *offence*? andon the contrary other *offences* are of greater demirit then the *penalty* of the *law*?

Why

Why is the *Law* ſtill kept in an unknown *tongue*, and the nicety of it rather *countenanced* then *corrected*?

Why are not *Courts* rejourned into every *County*, that the *People* may have *right* at their own doors, and ſuch tedious journyings may be prevented?

Why under pretence of equity, and a Court of Conſcience, are our wrongs doubled and trebled upon us, the Court of Chancerie being as extortionous (or more) then any other Court? yea 'tis a conſiderable Quære, whether the Court of Chancery were not firſt erected meerly to elude the Letter of the Law, which though defective, yet had ſome certainty; and under a pretence of Conſcience to devolve all cauſes upon meer will, ſwayed by corrupt intereſt. If *former Ages* have taken advantage to mix ſome *wheat* with the *Tares*, and to inſert ſome mites of *Freedom* into our *Lawes*: why ſhould we neglect (upon greater advantages) to double our files, and to produce the perfect image of *Freedom*, which is therefore *neglected*, becauſe not *known*.

How otherwiſe can we anſwer the *Call of God*, or the *crye of the People*, who ſearch for *Freedom* as for an hid *Treaſure*; yea, how can we be regiſtred, even in the *Catalogue* of *Heathens*, who made leſſe *ſhew*, but had more *ſubſtance*, and were excellent *Juſticiaries*, as to the *Peoples Rights*: ſo *Solon*, *Lycurgus*, &c. ſuch morall appearances in the minds of men, are of ſufficient *Energie* for the ordering of *Common-wealths*, and it were to be wiſhed, that thoſe *States* which are called *Chriſtian*, were but as *juſt* as *Heathens* in their *lawes*, and ſuch ſtrict promoters of *Common Right*.

Pure Religion is to viſit the *Fatherleſſe*, and the moſt glorious *Faſt* to abſtain from ſtrife, and ſmiting with the fiſt of wickedneſſe; in a word, to relieve the oppreſſed, will be a juſt *guerdon* and reward for our pains and *travell* in the *reformation* of the *law*.

And yet this work is very hard, there being ſo many concerned therein, and moſt being buſier to advance and ſecure *themſelves*, then to benefit the *publike*: yea our *Phiſitians* being *themſelves Parties*, and ingaged in thoſe *intereſts* which *freedom* condemns, will hardly be brought to deny *themſelves*, unleſſe upon much

much *conviction* and assistance from above; and yet this we must hope for, that the *reformation* of the *times* may begin in the breasts of our *Reformers*, for such men are likely to be the hopefull sire of *freedom*, who have the *image* of it engrafted in their own minds.

Chap. IV.

Of the corrupt Interest of Lawyers in the Common-wealth of England.

OF *Interests*, some are grounded upon *weaknesse*, and some upon *corruption*; the most *lawfull interests* are sown in weaknesse, and have their *rise* and *growth there*: *Apostle, Prophet, Evangelist* were onely for the perfecting of the Saints; *Phisitians* are of the like *interest* to the *body*; *marriage* is but an help and comfort in a *dead* state, for *in the Resurrection they neither marry, nor are given in marriage.*

Interests grounded upon *weaknesse* may be used, as long as our *weaknesse* doth continue, and no longer, *for the whole need not a Phisitian*, &c. such *interests* are good, profitable, usefull, and in their own *nature self-denying*, (i.) contented to sit down, and give way to that *strength* and glory to which they *serve*.

But the *interest* of *Lawyers* in this *Common-wealth*, seems to be grounded rather upon [illegible], then *weaknesse*, as by surveying its originall, [illegible] and *potency* of *Lawyers* in this *Kingdom*, [illegible] twofold ground.

1. The [illegible] being in a strange *tongue*, whereas when [illegible] language (as before the *Conquest*) [illegible] own [illegible] But the *hiddennesse* of the *law*, [illegible] *fallacies* and [illegible] thereof, render us in a posture unable to *extricate our* [illegible], but we must have recourse to the *shrine* of the *Lawyer*, whose *Oracle* is in such request, because it pretends to resolve *doubts*.

2. The *quarterly Terms* at *Westminster*, whereas when *justice* was administred in every *County*, this *interest* could not possibly grow to an height, but every man could mind and attend his own cause

without such *journeying* to and fro, and such chargeable attendance, as at *Westminster-Hall*. For, first in the *Countrey* the *law* was plain, and *controversies* decided by *Neighbours* of the *Hundred*, who could be soon informed in the state of the matter, and were very ready to administer *justice*, as making it their own case: but as for *Common Lawyers*, they carry only the *Idea* of *right* and *wrong* in their *heads*, and are so far from being touched with the *sense* of those wrongs, against which they seem to argue, that they go on meerly in a *formularie* of words, I speak not this out of emulation or envy against any mans *person*, but singly in behalf of the *people* against the *corruption* of the *interest it self*.

After the *Conquest*, when *Courts* and *Terms* were established at *Westminster* (for how could the *Darling* of *Prerogative* thrive, unless alwaies under the *Kings eye*) men were not at leasure to take so much pains for their own, but sometimes *they themselves*, sometimes their *friends* in their behalf came up in *Term time* to *London*, to plead their *causes*, and to procure *justice*: as yet the *interest* of *Lawyers* was a puny thing, for one friend would undertake to plead his *cause* for another; and he which was more versed in the tricks of the *law*, then his neighbour, would undertake a journey to *London*, at the request of those who had business to do, perhaps his charges born on the way, and some small reward for his pains; there were then no stately *Mansions* for *Lawyers*, but such *Agents* (whether *Parents*, *Friends* or *Neighbors* to the *Parties*) lodged like other *Travellers* in *Innes*, as *Countrey Attornies* still do: hence it came to passe, that when the *interest of Lawyers* came to be advanced in *Edward the third his time*, their *Mansions* or *Colledges* were still called *Innes*, but with an addition of *honor*, *Innes of Court*.

The *proceed* of *Lawyers interest* is as followeth, when such *Agents* as we have spoken off, who were employed by their neighbours at *London*, and by this means coming to be versed in the *niceties* of the *law*, found it sweeter then the *Plough*, and *controversies* beginning to increase, they took up their *Quarters* here till such time as they were form into an *orderly* body, and distinct *interest*, as now they are.

There is ground enough to conclude, even from the Letter of the *Statute Law* (*in* 28. *Edw.* 1. c. 11.) that mens *Parents*, *Friends* or *Neighbours* did plead for them, without the help of any other *Lawyer*.

After

After the *Lawyers* were formed into a *Society*, and had hired he *Temple* of the *Knights Templers* for the place of their abode, heir *intereſt* was not preſently advanced, but by the *contentions f the people*, after a long *ſeries* of time, ſo that the *intereſt of Lawyers* (in the height which now it is) comes from the ſame pot, as *pride* and *idleneſſe*, (*i.*) from *fulneſſe of bread*, or *proſpeity* the *mother of ſtrife*; not but that juſt and equall adminiſtraors of *laws* are very neceſſary in a *Common-wealth*, but when nce that which was at firſt but a *Title*, comes to be framed into n *intereſt*, then it ſets up it ſelf, and growes great upon the *rues* of others, and thorough the *corruption* of the *people*.

I take this to be a main difference between *lawfull* and *corupt tereſts*, *juſt-intereſts* are the *ſervants* of all, and are of an *humble irit*, as being content to have their *light* put out by the brightneſſe of that glory which they are ſupplemental to. But corrupt *tereſts* feare a change, and uſe all wiles to eſtabliſh *themſelves*, at ſo their *fall* may be great, and their *ruin* as chargeable to the orld as it can; for ſuch *intereſts* care for none but *themſelves*.

The readieſt way to informe ſuch men is to do it within us, r moſt men have the *common Barretor* within them, (*i.*) *princies of contention and wrong*; and thus the *law* becomes the *Engine f ſtrife*, the *inſtrument* of *luſt*, the *mother* of *debates*, and *Lawrs* are as *make-bates* between a man and his neighbour.

When Sir *Walter Rawleigh* was upon his triall, the *Lawyers* at were of *Councell* for the *King*, were very violent againſt m, whereupon *Sir Walter* turning to the *Jury*, uſed theſe words, *entlemen, I pray you conſider, that theſe men, meaning the Lawrs, do uſually defend very bad cauſes every day in the Courts, ainſt men of their owne profeſſion as able as themſelves, what then ill they not do againſt me? &c.* which Speech of his may be too uly affirmed of many *Lawyers*, who are any thing or nothing r gaine, and meaſuring *Cauſes* by their owne *Intereſt*, care not w long *right* be deferred and ſuits prolonged: There was a it in *Glocesterſhire* betweeen two *Families*, which laſted ſince e *Reign* of *Edward the fourth*, till of late compoſed, which cerinly muſt be aſcribed either to the *ambiguity* of the *law*, or the *tilty* of the *Lawyers*, neither of which are any great honor to e *Engliſh Nation*.

Cambden Brit. in Glocest.

How much better were it to ſpend the *acuteneſſe* of the *mind* in

in the *reall* and *ſubſtantiall ways of good*, and benefit to our ſelv and others? and not to unbowell our ſelves into a meer *web*, frothy and contentious way of *law*, which the *oppreſſed m* ſtands in no more need of, then the tender-hearted Chriſtian *Thomas Aquinas* to reſolve him in his *doubts*.

If there be ſuch a thing as *right* in the world, let us have it, *nefuco:* Why is it delayed, or denyed, or *varniſhed* over *w* guily *words*? Why comes it not forth in its owne *dreſſe*? W doth it not put off *law*, and put on *reaſon*, the *mother* of all *laws*? Why is not aſhamed of its long and mercenarie *train* Why can we not ask it and receive it our *ſelves*, but muſt have handed to us by others? In a word, why may not a man ple his own *Caſe*? or his *friends* and *acquaintance* (as formerly) ple for him?

Memorable is that paſſage in King *James* his Speech in *Star Chamber*, *In Countreys* (ſayes he) *where the formality of law h no place, as in Denmark, all their State is governed only by a wr ten law, there is no Advocate or Proctor admitted to plead, on the parties themſelves plead their own cauſe, and then a man ſta up and pleads the law, and there is an end; for the very Law-bo ſt ſelf is their only Judge: happy were all Kingdoms, if they could ſo: but here curious wits, various conceits, different actions, and v riety of examples breed queſtions in law.* Thus far he. And if t *Kingdom* doth reſemble *Denmark* in ſo many other *Cuſtom* why may it not be aſſimilated to it in this alſo? eſpecially con dering, that the world travells with *Freedom*, and ſome re compenſation is deſired by the *people*, for all their ſufferings, l ſes, blood.

To clear the *Channell* of the *law* is an honorable worke fo *Senate*, who ſhould be *preſervers* of the *Peoples Rights*.

FINIS.